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18 Sepulveda, and Wall

**FILED**

JUL 23 2014

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

19 UNITED STATES DISTRICT COURT  
20 NORTHERN DISTRICT OF CALIFORNIA

21 SAN FRANCISCO DIVISION

22 GABRIEL PINEIDA,

23 Plaintiff,

24 v.

25 LEE, et al.,

26 Defendants.

27 Case No.: 3:12-CV-01171-JST

28 **JOINT STIPULATION AND  
PROPOSED ORDER REGARDING  
FILING OF CORRECTED FIRST  
AMENDED COMPLAINT AND  
SCHEDULING MOTIONS TO  
DISMISS**

29 Trial Date: None set

Pursuant to Local Rules 6-2 and 7-12, Plaintiff Gabriel Pineida and Defendants Lee, Rodriguez, Sepulveda, and Wall (“Defendants,” and collectively with Pineida, the “Parties”), stipulate as recited below:<sup>1</sup>

WHEREAS, on August 23, 2013, a panel of Court-appointed experts submitted a report regarding health care provided to inmates at Salinas Valley State Prison (“SVSP”), and this report identified Brian Wilson as CEO of health care operations at SVSP since 2013 (*Plata, et al. v. Brown, et al.*, Case No. 3:01-cv-01351, Dkt. No. 2704 (the “*Plata Report*”) at p. 8);

WHEREAS, on April 10, 2014, Pineida filed a motion for leave to file an amended complaint adding as defendants certain SVSP officials, including the CEO of health care, who he believed to be Brian Wilson (Dkt. No. 86);

WHEREAS, by Order dated June 27, 2014, the Court granted Pineida’s motion for leave to file an amended complaint (Dkt. No. 103);

WHEREAS, on June 27, 2014, Pineida filed his First Amended Complaint (Dkt. No. 107);

WHEREAS, on July 1, 2014, the Court issued a summons directed to the newly added defendants, including Brian Wilson (Dkt. No. 108);

WHEREAS, after attempting service, Pineida learned that the CEO of health care at SVSP was named Brian Marshall, and not “Brian Wilson”;

WHEREAS, the Parties agree that the error in naming defendants in the First Amended Complaint was due to the apparent clerical error in the *Plata Report*;

WHEREAS, the Parties agree that Pineida should be permitted to file the CORRECTED First Amended Complaint attached hereto as **Exhibit 1** changing the name of the SVSP CEO named in the complaint from Brian Wilson to Brian Marshall;

WHEREAS, Mr. Pineida further requests that the Court issue a summons directed to Brian Marshall in the form attached hereto as **Exhibit 2**, and Defendants do not oppose this request;

WHEREAS, on July 11, 2014, Defendants filed a motion to dismiss the First Amended

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<sup>1</sup> Defendant Millner has yet to appear in this action, as his counsel specially appeared for purposes of filing a motion to quash service of summons, which has since been withdrawn. (Dkt. Nos. 104, 120, 121.)

1 Complaint (Dkt. No. 118);  
2

3        WHEREAS, the Parties agree that the pending motion to dismiss shall be treated as a  
4 motion to dismiss the operative complaint and, thus, need not be re-submitted in light of the filing  
5 of the CORRECTED First Amended Complaint;

6        WHEREAS, the Parties agree that, in the interest of efficiency, the Court should have a  
7 single hearing date for all motions to dismiss (including Defendants' currently pending motion  
8 and any motions to be filed by defendants Grounds, Adams, Bright, and Marshall) and briefing  
9 relating to these motions should be consolidated in accordance with the schedule below;

10      WHEREAS, pursuant to Fed. R. Civ. P. 12(a)(1), the deadline for defendants Grounds,  
11 Adams, and Bright to file a responsive pleading to the First Amended Complaint is currently July  
12 23, 2014;

13      WHEREAS, the deadline for Plaintiff to respond to the pending motion to dismiss is  
14 currently July 25, 2014;

15      WHEREAS, in light of the agreements herein, the Parties agree that defendants Grounds,  
16 Adams, and Bright's deadline to file a responsive pleading to the First Amended Complaint shall  
17 be extended to August 1, 2014 and Plaintiff's deadline to file his opposition to the pending motion  
18 to dismiss and any other motions to dismiss shall be extended to August 15, 2014;

19      WHEREAS, this is the first request for any modification to the schedule with respect to  
20 the motion to dismiss, and the Parties do not anticipate that granting this stipulation will have any  
21 effect on any other deadline in this case;

22      THE PARTIES HEREBY STIPULATE and jointly request, subject to Court approval, as  
23 follows:

24            (1)     The CORRECTED First Amended Complaint attached hereto as **Exhibit 1** shall  
25 hereafter be the operative complaint in this action. *The amended complaint shall  
be filed on the Court's docket no later than July 25, 2014;*  
26            (2)     The Court shall issue a summons directed to Brian Marshall in the form attached  
27 hereto as **Exhibit 2**. *The summons shall be submitted to the Court via the event*

### *Proposed Summons in ECF:*

- (3) The currently pending motion to dismiss (Dkt. No. 118) shall be treated as a motion to dismiss the operative complaint in this action;
- (4) The deadline for defendants Grounds, Adams, and Bright to file a responsive pleading to the First Amended Complaint shall be extended from July 23, 2014 to August 1, 2014;
- (5) The deadline for Plaintiff to file his opposition to the currently pending motion to dismiss shall be extended from July 25, 2014 to August 15, 2014;
- (6) All motions to dismiss shall proceed in accordance with the schedule below:

Event	Date
Deadline for defendants (other than Millner) to file motions to dismiss <sup>2</sup>	August 1, 2014
Deadline for plaintiff to file consolidated oppositions to motions to dismiss	August 15, 2014
Deadline for defendants to file consolidated reply briefs in support of motions to dismiss	August 22, 2014
Hearing on motions to dismiss	September 4, 2014

<sup>2</sup> The Office of the Attorney General for the State of California will represent defendants Grounds, Adams, and Bright, but does not, at this time, represent defendant Brian Marshall. Once Marshall is served, the Parties agree to meet and confer with counsel for Marshall, to the extent the Attorney General's office does not appear on his behalf, to discuss a schedule for any contemplated motion to dismiss.

1 FENWICK & WEST LLP  
2 Dated: July 22, 2014  
3  
4 By: /s/ Ravi R. Ranganath  
5 Ravi R. Ranganath  
6 Attorneys for Plaintiff Gabriel Pineida  
7  
8 Dated: July 21, 2014  
9 OFFICE OF THE ATTORNEY GENERAL  
10 OF CALIFORNIA  
11  
12 By: /s/Trace Maiorino  
13 Trace O. Maiorino  
14 Attorneys for Defendants  
15 LEE, et al.  
16  
17 PURSUANT TO STIPULATION, IT IS SO  
18 ORDERED.  
19  
20 The Honorable John S. Tigar  
21 United States District Judge  
22  
23 Dated: 7/23, 2014  
24  
25  
26  
27  
28

STIP RE FILING OF CORRECTED 1<sup>ST</sup> AM.  
COMPL. AND SCHEDULING MOTIONS  
TO DISMISS